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HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Staff Judge Advocate

Yokohama, Japan
30 April 1948

UNITED STATES OF AMERICA VS HIROZO GOTO
UNITED STATES OF AMERICA VS NOBORU KODAMA
UNITED STATES OF AMERICA VS TETSUYA MURAKAMI
UNITED STATES OF AMERICA VS TAKEKI NISHIMURA (as amended, R.44)
UNITED STATES OF AMERICA VS MOTOMU OKAMOTO
UNITED STATES OF AMERICA VS KO OSAKO

Review of the Staff Judge Advocate

1. The attached record of trial of Hirozo Goto, Noboru Kodama, Tetsuya Murakami, Takeki Nishimura, Motomu Okamoto and Ko Osako at Yokohama, Japan, from 26 November 1947 to 3 December 1947 by a Military Commission appointed by paragraph 15, Special Orders No. 275, Headquarters Eighth Army, United States Army, dated 24 November 1947, having been referred to the Staff Judge Advocate, this review thereof is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Hirozo Goto	DATE OF CONFINEMENT: 5 December 1945
AGE: 29	DATE OF ARRAIGNMENT: 26 November 1947
RESIDENCE: Hiroshima-ken, Hiba-gun, Kami Takano Aza, Iraiichi	PLACE OF TRIAL: Yokohama, Japan
MARITAL STATUS: Married	PERIOD OF TRIAL: 26 November 1947 to 3 December 1947
RELATIVES: Wife, mother, two brothers, two children	DATE OF SENTENCE: 3 December 1947
EDUCATION: Higher elementary school graduate	SENTENCE: CHL for thirty (30) months
VOCATION: Farmer	CLEMENCY RECOMMENDED BY COMMISSION: No
MILITARY CAREER: Conscripted 10 January 1939, entered 41st Infantry Regiment. China front, April 1939. Wounded and entered hospital 15 August 1939. Discharged 12 July 1940.	

NAME: Noboru Kodama	DATE OF CONFINEMENT: 20 November 1945
AGE: 27	DATE OF ARRAIGNMENT: 26 November 1947
RESIDENCE: Yamaguchi-ken, Onoda-shi, Motoyama 51-banchi	PLACE OF TRIAL: Yokohama, Japan
MARITAL STATUS: Married	PERIOD OF TRIAL: 26 November 1947 to 3 December 1947
RELATIVES: Wife, father, mother, one child	DATE OF SENTENCE: 3 December 1947
EDUCATION: 8 years of schooling	SENTENCE: CHL for thirty (30) months
VOCATION: Miner	CLEMENCY RECOMMENDED BY COMMISSION: No
MILITARY CAREER: Entered Army 10 April 1941. Wounded 25 January 1942; Tokyo Military Hospital, August 1942. Dis- charged 14 January 1943.	

NAME: Tetsuya Murakami	DATE OF CONFINEMENT: 9 April 1946
AGE: 32	DATE OF ARRAIGNMENT: 26 November 1947
RESIDENCE: Shimane-ken, Suki-gun, Togo- mura, Togo	PLACE OF TRIAL: Yokohama, Japan
MARITAL STATUS: Married	PERIOD OF TRIAL: 26 November 1947 to 3 December 1947
RELATIVES: Wife, father, mother, two brothers, sister	DATE OF SENTENCE: 3 December 1947
EDUCATION: Second year middle school	SENTENCE: CHL for eighteen (18) months
	CLEMENCY RECOMMENDED BY COMMISSION: No

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VOCATION: School teacher
MILITARY CAREER: Conscripted 2 August 1937; discharged 25 December 1937. Recalled 18 May 1938 and discharged 25 March 1941. Recalled again 1 June 1942 and assigned to POW camp 24 November 1942. Entered Yamaguchi Military Hospital 16 September 1943 and remained until 13 November 1943. Demobilized 30 March 1946.

NAME: Takeki Nishimura (as amended, R. 44)	DATE OF CONFINEMENT: 21 July 1946
AGE: 29	DATE OF ARRAIGNMENT: 26 November 1947
RESIDENCE: Yamaguchi-ken, Yamaguchi-shi, Okura Yabara 'za Yuda	PLACE OF TRIAL: Yokohama, Japan
MARITAL STATUS: Married	PERIOD OF TRIAL: 26 November 1947 to 3 December 1947
RELATIVES: Wife, father, mother	DATE OF SENTENCE: 3 December 1947
EDUCATION: 6 years of grammar school, 2 years of high school	SENTENCE: CHL for two (2) years
VOCATION: Farmer	CLEMENCY RECOMMENDED BY COMMISSION: No
MILITARY CAREER: May 1, 1939, 2nd class private; August 1, 1939, first class private. Discharged October 17, 1940.	

NAME: Motomu Okamoto	DATE OF CONFINEMENT: 25 June 1946
AGE: 29	DATE OF ARRAIGNMENT: 26 November 1947
RESIDENCE: Yamaguchi-ken, Yuga-gun, Kamihata-mura	PLACE OF TRIAL: Yokohama, Japan
MARITAL STATUS: Married	PERIOD OF TRIAL: 26 November 1947 to 3 December 1947
RELATIVES: Wife, mother, 3 sisters, one child	DATE OF SENTENCE: 3 December 1947
EDUCATION: Elementary school graduate	SENTENCE: CHL for two (2) years
VOCATION: Carpenter	CLEMENCY RECOMMENDED BY COMMISSION: No
MILITARY CAREER: Conscripted 1 May 1939; China front from 1 October 1939 until 10 August 1941. Discharged 22 December 1941.	

NAME: Ko Osako	DATE OF CONFINEMENT: 1 July 1946
AGE: 42	DATE OF ARRAIGNMENT: 26 November 1947
RESIDENCE: Shimane-ken, Yatsuka-gun, Yatsuka-mura	PLACE OF TRIAL: Yokohama, Japan
MARITAL STATUS: Married	PERIOD OF TRIAL: 26 November 1947 to 3 December 1947
RELATIVES: Wife, father, five children	DATE OF SENTENCE: 3 December 1947
EDUCATION: Graduated from higher agricultural school	SENTENCE: CHL for two (2) years
VOCATION: Farmer	CLEMENCY RECOMMENDED BY COMMISSION: No
MILITARY CAREER: Entered Army 1 December 1925, 63rd Inf. Regiment. Discharged 31 March 1927. Conscripted 1 July 1938, 63rd Inf. Regiment. Promoted to 1st Lieutenant 9 March 1940. Assigned to Motoyama POW Branch Camp from 26 November 1942 until 26 February 1945. Assigned to Matsue Regimental Headquarters from 1 March 1945 until 30 November 1945. Promoted to Captain 1 August 1945.	

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2. Synopsis of Charges, Pleas, Findings, Legal Sufficiency and Sentences:

<u>Charge and Specifications:</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
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GOTO

Charge: Accused, at the times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War.	NG	G	Yes
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Sp 1: On numerous occasions between 1 January 1943 and 31 December 1944, at Hiroshima POW Camp No. 8, Motoyama, Honshu, Japan, the accused did willfully and unlawfully mistreat John Wetters, a British PW, by brutally beating him, by compelling said PW to stand on the parade ground for a long period of time holding a broken shovel weighted with a large stone and by otherwise abusing him.	NG	Guilty except the word "brutally" and excepting the words "by compelling said PW to stand on the parade ground for a long period of time holding a broken shovel weighted with a large stone". Of the excepted words, Not Guilty.	Yes
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Sp 2: On numerous occasions between 1 January 1943 and 31 December 1944, the accused did willfully and unlawfully mistreat Leslie Dursley, a British PW, by beating and otherwise abusing him.	NG	G	Yes
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Sp 3: On numerous occasions between 1 January 1943 and 31 August 1945, the accused did willfully and unlawfully mistreat, torture, abuse and beat numerous Allied PW's.	NG	NG	---
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Sentence imposed: Confinement at hard labor for thirty (30) months.

Maximum legal punishment: Death

KODAMA

Charge: Accused, at the times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War.	NG	G	Yes
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Sp 1: Between 1 December 1944 and 31 December 1944, at Hiroshima POW Camp No. 3, Motoyama, Honshu, Japan, the accused did willfully and unlawfully mistreat and abuse Willie Griffith, a British PW, by beating him.	NG	G	Yes
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Sp 2: On numerous occasions between 25 February 1944 and 31 August 1945, the accused did willfully and unlawfully mistreat, torture, abuse and beat numerous Allied PW's.	NG	Guilty, except the word "torture". Of the excepted word, Not Guilty.	Yes
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Sentence imposed: Confinement at hard labor for thirty (30) months.

Maximum legal punishment: Death

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MURAKAMI

Charge: Accused, at the times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War.	NG	G	Yes
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Sp 1: On or about 11 July 1944, at Hiroshima POW Camp No. 8, Motoyama, Honshu, Japan, accused did willfully and unlawfully mistreat and abuse Richard Bland Williams, an American PW, by striking him on the side of the head, thereby bursting his eardrums.	NG	Guilty, except the word "eardrums"; substituting therefor the words "left eardrum". Of the excepted word, Not Guilty; of the substituted words, Guilty.	Yes
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Sp 2: Between 1 April 1943 and 31 May 1943, the accused did willfully and unlawfully mistreat and abuse Leslie Dursley, a British PW, by beating him with a club.	NG	G	Yes
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Sp 3: On numerous occasions between 1 April 1943 and 31 July 1944, the accused did willfully and unlawfully mistreat, torture, abuse and beat numerous Allied PW's.	NG	NG	---
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Sentence imposed: Confinement at hard labor for eighteen (18) months.

Maximum legal punishment: Death

NISHIMURA

Charge: (as amended R. 44) Accused, Takeki Nishimura, at the times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War.	NG	G	Yes
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Sp 1: (as amended R. 44) Between 1 December 1944 and 31 December 1944, at Hiroshima POW Camp No. 8, Motoyama, Honshu, Japan, accused Takeki Nishimura, did willfully and unlawfully mistreat and abuse William Kinnear, a British PW, by beating him.	NG	NG	---
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Sp 2: (as amended R. 44) Between: 1 January 1943 and 30 April 1943, accused did willfully and unlawfully mistreat John Metters, a British PW, by beating him with fists, a rifle and clubs, kicking him and otherwise abusing him.	NG	Guilty, except the words "with fists, a rifle and clubs, kicking him and otherwise abusing him". Of the excepted words, Not Guilty.	Yes
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Sp 3: (as amended R. 44) On numerous occasions between 1 February 1943 and 5 May 1943, accused did willfully and unlawfully mistreat numerous Allied PW's by beating and otherwise abusing them.	NG	NG	---
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Sentence imposed: Confinement at hard labor for two (2) years

Maximum legal punishment: Death

(p 4, Goto et 5, Case #83)

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Charge: Accused, at the times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War. NG G Yes

Sp 1: Between 1 January 1943 and 31 December 1943, at Hiroshima POW Camp No. 8, Motoyama, Honshu, Japan, accused did willfully and unlawfully mistreat Leslie Dursley, a British PW, by beating and otherwise abusing him. NG G Yes

Sp 2: Between 1 January 1943 and 31 December 1943, accused did willfully and unlawfully mistreat John Metters, a British PW, by beating and otherwise abusing him. NG G Yes

Sp 3: Between 1 March 1943 and 31 March 1943, accused did willfully and unlawfully mistreat Joseph Herbert Brogden, a British PW, by beating and otherwise abusing him. NG NG ---

Sp 4: Between 1 March 1943 and 31 August 1945, accused did willfully and unlawfully mistreat and torture numerous Allied PW's by beating and otherwise abusing them. NG NG ---

Sentence imposed: Confinement at hard labor for two (2) years.

Maximum legal punishment: Death

OSAKO.

Charge: Accused, at the times and places set forth in the specifications hereto attached, did violate the Laws and Customs of War. G G Yes

Sp 1: Between 26 November 1942 and 1 March 1945, at or near Hiroshima POW Camp No. 8, Motoyama, Honshu, Japan, accused did unlawfully disregard and fail to discharge his duty as Commander of said camp to restrain and control members of his command and persons under his supervision and control by permitting them to commit the following acts, atrocities and other offenses against certain American and Allied PW's. G Guilty except the word "atrocities" and except the words "other offenses"; substituting for the words "other offenses" the word "offenses". Of the excepted words, Not Guilty; of the substituted word, Guilty. Yes

a. On numerous occasions between 1 January 1943 and 31 December 1944, the unlawful mistreatment and torture of Leslie Dursley, a British PW, by beating and otherwise abusing him. G Guilty, except the words "and torture". Of the excepted words, Not Guilty. Yes

b. On numerous occasions between 1 January 1943 and 31 December 1944, the unlawful mistreatment and torture of John Metters, a British PW, by beating and otherwise abusing him. G Guilty, except the words "and torture". Of the excepted words, Not Guilty. Yes

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- c. Between 1 December 1944 and 31 December 1944, the unlawful mistreatment and abuse of "Willie Griffiths, a British P", by beating him into unconsciousness. G Guilty, except the words "into unconsciousness". Of the excepted words, Not Guilty. Yes
- d. Between 1 December 1944 and 31 December 1944, the unlawful mistreatment and abuse of "William Kinnear, a British P", by beating him into unconsciousness. G NG
- e. On numerous occasions between 1 March 1944 and 1 September 1944, the unlawful withholding of food, medical supplies and medical attention from Norman Haykin, a British P, thereby contributing to the death of said Norman Haykin. NG Nolle prossed (R. 8, 80)
- f. On 27 October 1943, the unlawful mistreatment and abuse of John Rufus Roberts, a British P, by causing and compelling said John Rufus Roberts to work at or near the Motoyama Mines while physically unable so to do, thereby causing the death of said John Rufus Roberts. NG Nolle prossed (R. 8, 80)
- g. Between 1 March 1943 and 30 April 1943, the unlawful and brutal mistreatment of Patrick O'Neill, a British P, by kicking him in his private parts, by beating him with rifle butts and bamboo poles, and by otherwise abusing him. G NG
- h. Between 26 November 1942 and 1 March 1945, the unlawful mistreatment, torture, abuse and beatings of numerous Allied P's. G NG

Sentence imposed: Confinement at hard labor for two (2) years.

Maximum legal punishment: Death

3. Summary of the Evidence:

a. For the Prosecution:

The accused Kodama (R. 36, 48) and the accused Goto (R. 46, 48) declined to testify. They were identified by the accused Osako who was the camp commander of Prisoner of War Camp No. 8, Motoyama. He also identified the other accused as having been under his command. The accused Osako, Okamoto, Murakami, and Nishimura, the other accused, elected to be sworn and testify as witnesses in their own behalf. Each identified himself as having served at the camp in question and during the time of the alleged offenses.

OKAMOTO

As to Specification 1: During the year 1943 and on or about January 1943, the accused, together with other guards, dragged P Dursley from his bed in the hospital at the camp where he was confined, because of an injured leg received while working in the mine. The accused and others kicked and severely beat the prisoner with their fists and bamboo clubs and then confined him in a cell in the guardhouse (Ex. 2, 3, 5, 6, 7, 9, 19, 20, 21).

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As to Specification 2: On or about January 1943 the accused, with other guards (Goto, Nishimura, Nodo, and Ono) removed P^W Metters from his cell in the guardhouse and severely beat and struck him with their fists and bamboo sticks. The prisoner was then kicked by the guards while wearing boots (Ex. 2, 3, 5, 8, 9, 10, 15, 19, 21).

As to Specifications 3 and 4: Not Guilty.

KODAMA

As to Specification 1: During the month of December 1944, the accused severely beat and struck with his fists prisoner of war Griffith until the prisoner became unconscious (Ex. 1, 16, 18).

As to Specification 2: Between 15 February 1944 and 31 August 1945 the accused on numerous occasions severely beat, struck, and mistreated numerous prisoners of war then confined at the camp (Ex. 11, 18, 22).

MURAKAMI

As to Specification 1: The accused did on or about 11 July 1944 strike Dr. Williams, an American prisoner of war, on the left side of his head with his fist, thereby injuring the prisoner's left ear drum.

As to Specification 2: Between the dates of 1 April 1943 and 31 May 1943 the accused, together with other guards, did severely beat and strike P^W Dursley (Ex. 4, 9, 12, 19).

As to Specification 3: Not Guilty.

NISHIMURA

As to Specification 1: Not Guilty.

As to Specification 2: During the year 1943 the accused, together with other guards, severely beat, struck, and mistreated prisoner of war Metters (See Specification 2, Okamoto) (Ex. 5, 10, 11, 19, 21).

As to Specification 3: Not Guilty.

GOTO

As to Specification 1: During and between the dates of 1 January 1943 and 31 December 1944, the accused on numerous occasions, together with other guards, did beat and strike P^W Metters (Ex. 2, 5, 13, 14, 19, 21).

As to Specification 2: During and between the dates of 1 January 1943 and 31 December 1944 the accused, together with other guards, did on numerous occasions, beat, strike, and mistreat P^W Dursley by using their fists and bamboo clubs (Ex. 2, 5, 7, 10, 13, 19, 21).

As to Specification 3: Not Guilty.

OSAKO

As to Specification 1-a: (See Specification 2, Goto; Specification 2, Murakami; Specification 1, Okamoto. The summary of evidence therein applies to this specification).

As to Specification 1-b: (See Specification 2, Okamoto; Specification 2, Nishimura; Specification 1, Goto. The summary of evidence therein applies to this specification).

As to Specification 1-c: (See Specification 1, Kodama. The summary of evidence therein applies to this specification).

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As to Specification 1-d: Not Guilty.

As to Specification 1-e and 1-f: Nolle Prosequi (R. 8).

As to Specification 1-g and 1-h: Not Guilty.

b. For the Defense:

OKAMOTO

Motomu Okamoto, one of the accused, having been properly warned and advised by the Commission of his rights as a witness, elected to testify as a witness in his own behalf (R. 19). He stated that he was attached to the prisoner of war camp as a civilian guard. He never mistreated prisoner of war Dursley, and was not present when the guards made the prisoner bow and salute them. He did not mistreat prisoner of war Hunt or Dursley while they were in the guardhouse (R. 20, 21). He did beat prisoner of war Metters who struck him when he brought him out of the guardhouse; he slapped P^W Metters a couple of times and hit him with a bamboo stick (R. 21). The accused Osako warned him not to treat prisoner Metters roughly in the future. He never mistreated Metters again. He did not remember P^W Brogdon and did not hit or strike this prisoner with a rifle. Company guards were not issued rifles (R. 22, 31). During his service at the camp he considered himself friendly to the P^W's and at the end of the war, he presented Maj. Earle and Mr. Trillwood with "presentoes" (R. 24). The accused offered Exhibits A to I, inclusive, the same being affidavits of former prisoners of war in support of his treatment toward the P^W's (R. 19-31).

KODAMA

The accused Kodama declined to be sworn and testify in his own behalf (R. 36, 48).

MURAKAMI

Accused Murakami, having been properly and duly warned and advised by the Commission as to his rights as a witness, elected to be sworn and testify in his own behalf (R. 37). He stated that Dr. Williams, an American prisoner of war, entered the camp commander's office and failed to salute and bow in the proper manner. He slapped the P^W for this reason. He later asked P^W Trillwood to tell Dr. Williams that he was sorry that he slapped him. The accused Osako warned accused Murakami not to repeat the incident. Accused stated he did not slap the prisoner very hard and that he did not know that his eardrum was injured (R. 39). He stated that he slapped Col. Petrie, a prisoner of war, for permitting the prisoners to start fires before the regular hours (R. 40). He further stated that he did not at any time strike any other officer and that he did not strike P^W Dursley (R. 40).

NISHIMURA

The accused Nishimura, having been duly warned and advised by the Commission as to his rights as a witness, elected to be sworn and testify in his own behalf (R. 41). He stated that he never struck Kinner or Metters, and that he did not mistreat or beat P^W Dursley. On the occasion that Metters was beaten, the accused was not in the camp (R. 42, 43). He did slap prisoners of war with his open hand but did not recall who they were. The slappings occurred during the year 1943, during the year 1944 he never struck any prisoner of war (R. 44, 45).

GOTO

The accused Goto, having been advised as to his rights, declined to testify (R. 46, 48).

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The accused Osako, having been by the Commission duly warned and advised as to his rights, elected to be sworn and testify as a witness in his own behalf (R. 48). He stated that the other five accused in this case were under his command at the camp, that he was the camp commander and, as such camp commander, he had warned his guards that they should treat prisoners humanely and with kindness. He investigated all complaints made to him; that he took action and properly punished the guilty offender. On three occasions he punished prisoners of war: Dursley and Metters, the third prisoner he did not remember his name. He confined prisoner Dursley for one week (R. 54, 56). PW Dursley had agitated the Koreans down in the mine to slow down their work and to create trouble against the Japanese. This agitation by PW Dursley occurred on several occasions. During the prisoner's confinement, the accused learned that some of the guards had beaten the prisoner while confined. He later confined two of the guards to their quarters for a period of three days (R. 55). The two guards who were punished are not among the five accused herein (R. 55). Prisoner of War Metters had stolen food from the kitchen and for this offense the accused confined him to a cell. The prisoner tried to escape and hit the guard, but was returned to the guardhouse and the accused punished him by giving him twenty days' additional confinement, but about four days thereafter, he released the prisoner because PW Trillwood advised him as to the prisoner's mental condition (R. 56, 57). He did not punish the guards for the beating of the prisoner at this time, because he had attempted to escape (R. 57). He never personally observed any of his guards mistreating prisoners (R. 60). He stated that on one occasion he was severely reprimanded by his superiors at a general meeting of all camp commanders because he was too kind and gave too much attention to the prisoners. This reprimand did not cause him to change his attitude towards the prisoners after he returned to the camp from this meeting (R. 60, 61). Accused testified on cross-examination that on one occasion he did go to the guardhouse and heard some confusion therein. PW Dursley was at that time confined in the cell, and after investigating he learned that the guard had severely beaten the prisoner. He punished this guard for this act of mistreatment. Accused testified that he considered his being camp commander, he was responsible for the misconduct, beatings and mistreatments administered by his guards to the prisoners of war and that is the reason he pleaded guilty to the specification, if such beatings had occurred (R. 63). He never heard of the other abuses and mistreatments of the prisoners as alleged in the other specifications (R. 64, 66, 67).

4. Errors and Irregularities:

As to the charges and specifications against each of the six accused:

a. There are no errors or irregularities appearing in the record of trial which injuriously affect any substantial rights of any of the six accused. The record of trial discloses that the trial was held without partiality, and adequate opportunity was accorded to each of the accused to present any matters in his individual defense that he might desire. The accused were ably represented by Japanese and American counsel and each fully cooperated in his individual defense. There is no evidence that any of the accused were insane or otherwise incompetent at the time of the trial or at the time of the alleged offenses. Insanity was not an issue.

b. There have been no questions raised in the record that were not decided by the Commission upon the hearing of the evidence presented. Two-thirds of the members of the Commission present at the time the findings were arrived at and the sentence imposed concurred in the result.

c. The various objections and motions which were made during the trial were ruled upon by the Law Member of the Commission, and his rulings thereon cannot be said to be prejudicial to any of the six accused. There is sufficient legal evidence in the record of trial which in itself supports the findings of the Commission, in view of the compelling evidence of guilt properly in evidence, which is of such quantity and quality as to practically compel in the minds of conscientious and reasonable men the findings of guilty. The errors and irregularities appearing in the record of trial and the alleged errors and alleged

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insufficiency of evidence called to the attention of the Commission during argument of defense counsel are not deemed prejudicial to any of the accused. There appear to be no mitigating circumstances and no justification for the crimes committed by any of the accused as alleged in the charges and specifications upon which each accused was separately found guilty (R. 78-80).

5. Opinion:

a. The record is legally sufficient to sustain the findings of the Commission and the Sentence imposed against each of the six accused (R. 78-80).

b. The charge and specifications of which each accused was found guilty allege violations of the Laws and Customs of War committed on the dates therein alleged by each accused, who were enemy nationals, against members of the United States Armed Forces and the British Armed Forces at a time when a state of war existed between the United States and its Allies, and Japan. Accordingly, the Commission which was appointed to hear the case had jurisdiction of the accused and the subject matter under SC/P Regulations, AG 000.5 (5 Dec 45)IS, subject, "Regulations Governing the Trials of Accused War Criminals", and amendments thereto, as established by the Supreme Commander for the Allied Powers. The Commission was constituted by proper authority and had jurisdiction of both the accused and the offenses (Case Docket No. 55, Murakami et al; No. 39, Harita).

c. As to the accused Osako, who was camp commander, it has heretofore been held in numerous reviews of this Headquarters that a camp commander is responsible for the proper care of the prisoners under his (command) guardianship, and that he is obligated to supervise their safekeeping. Should he delegate any of his duties and responsibilities to any of his subordinates, he still retains responsibility and is answerable for any misconduct or mistreatment administered to a prisoner of war by any of his subordinates (Case Docket No. 39, Harita, par. d and h; No. 55, Murakami et al). Therefore, under the evidence as submitted by the prosecution in this trial, the above holding is applicable to the accused, there being under the facts submitted in the record of trial, no legal justification or reason for the accused Osako to have neglected his responsibility and permitted the numerous beatings of prisoners by his subordinates, according to the evidence in the record. He had certain responsibilities, and if he failed through his negligence or otherwise to meet the situation, or to adjust and reprimand the offenders and do all that was possible to prevent future mistreatments, then he failed in the discharge of his duties as camp commander (Yamashita, 66, S. Ct. 340, 348, 349). There are nine proved instances of brutal acts in violation of the laws of war committed by his subordinates. Careful reading of the record of trial and consideration of the argument of defense counsel which appears in the record of trial, reveal no extenuating or mitigating circumstances under command responsibility. The charge and specifications against the accused are that he failed to discharge his duty as camp commander to control the behavior of his subordinates by permitting them to commit brutal atrocities against one American and other British prisoners of war who were confined at Camp No. 8, Motoyama, under his custody and command. The provisions of the Rules of Land Warfare plainly imposed upon the accused, as camp commander, an affirmative duty to take such measures as were within his power and appropriate under the circumstances to protect the prisoners of war and, as stated hereinabove, from the evidence it appears that the accused failed to take measures necessary to discharge the duty imposed upon him to control the conduct of members of his command. There is sufficient evidence in the record of trial, including the affidavits and written statements properly received in evidence by the Commission, which conclusively establishes the guilt of the other five accused for the offenses of which they were convicted. The evidence conclusively supports the findings of guilty, and the sentences imposed by the Commission are legal and are not excessive for the offenses for which each accused was found guilty.

d. The Commission, as a trier of the facts, was in a position to judge the sufficiency of the evidence before it as to whether accused failed to discharge his duty as camp commander, and as to whether the other five accused committed the offenses alleged against them; and its findings, based upon the evidence submitted in the form of affidavits by former prisoners of war who were

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at the time confined and who personally knew the existing conditions, should not be disturbed on review.

e. Defense counsel called the attention of the Commission to Case Docket No. 243 (Asada and Noda) and Case Docket No. 202 (Yamamoto) and requested the court to take judicial notice of the evidence submitted therein for the reason that the two above-cited cases, which have been tried by former commissions, were companion cases to the present case. The offenses charged against the accused in the above two cases were committed while they were serving under the accused Osako as camp commander of the camp in question. The two cases above-referred-to do not affect in any way the alleged specifications against any of the accused herein.

6. Recommendations:

There are no letters of clemency from any members of the Commission or others. The charge and specifications against each accused of which he was found guilty allege violations of the laws of war and were fully supported by the evidence. The trial was fair and just. The sentence of the Commission as to each of the accused is considered legal and is not excessive for the crimes for which each was convicted. It is recommended that the sentences as to each of the six accused be approved. In compliance with the established policy, owing to the length of time each accused has spent in confinement prior to the date of sentence, it is recommended that credit be given for the length of time designated opposite the name of each accused:

Kodama was confined 20 November 1945, sentenced 3 December 1947 to confinement at hard labor for thirty months; credit twenty-one and a half months.

Okamoto was confined 25 June 1946, sentenced 3 December 1947 to confinement at hard labor for two years; credit fourteen and a half months.

Murakami was confined 9 April 1946, sentenced 3 December 1947 to confinement at hard labor for eighteen months; credit seventeen months.

Nishimura was confined 21 July 1946, sentenced 3 December 1947 to confinement at hard labor for two years; credit thirteen and a half months.

Goto was confined 5 December 1945, sentenced 3 December 1947 to confinement at hard labor for thirty months; credit twenty-one months.

Osako was confined 1 July 1946, sentenced 3 December 1947 to confinement at hard labor for two years; credit fourteen months.

It is recommended that Sugamo Prison, Tokyo, Honshu, Japan be the appropriate place of confinement for all of the accused.

7. Action:

Attached hereto are forms of action designed to carry into effect the above recommendations should they meet with your approval.

I Concur:

GEORGE R. TAYLOR
Reviewer
Judge Advocate Section

ALLAN R. BROWNE
Lt Colonel JAGD
Army Judge Advocate

(p. 11, Goto et al 5, Case #83)

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